

AMENDED IN SENATE APRIL 20, 2005

**SENATE BILL**

**No. 187**

---

**Introduced by Senator Soto**

February 10, 2005

---

An act to ~~amend Section 13304 of the Water Code~~ add Section 116365.3 to the Health and Safety Code, relating to drinking water.

LEGISLATIVE COUNSEL'S DIGEST

SB 187, as amended, Soto. ~~Cleanup and abatement orders. Drinking water: contaminants.~~

*The California Safe Drinking Water Act requires the State Department of Health Services to adopt primary drinking water standards for contaminants in drinking water and prohibits those standards from being less stringent than the national primary drinking water standards adopted by the United States Environmental Protection Agency. The act requires the Office of Environmental Health Hazard Assessment to prepare and publish an assessment of the risks to public health posed by each contaminant for which the department proposes a primary drinking water standard. The act requires the risk assessment to contain an estimate of the level of the contaminant in drinking water that is not anticipated to cause or contribute to adverse health effects, or that does not pose any significant risk to health, to be known as the public health goal for the contaminant.*

*The act requires all public health goals published by the office to be established in accordance with public health considerations and factors, and be reviewed at least once every 5 years and revised as necessary based upon the availability of new scientific data.*

*In conducting the review and revision of public health goals, the act authorizes the office to give special consideration to those*

*contaminants that cause or contribute to adverse health effects in members of subgroups of the population that are at greater risk of adverse health effects than the general population when exposed to the contaminant in drinking water, including infants and children. In preparing and publishing risk assessments that involve infants and children, the act requires the office to assess, to the extent information is available, (1) exposure patterns, (2) special susceptibility of infants and children to contaminants in comparison to the general population, (3) the effects on infants and children of exposure to contaminants and other substances that have a common mechanism of toxicity, and (4) the interaction of multiple contaminants on infants and children.*

*This bill would require the office to revise the public health goal for perchlorate in drinking water as soon as possible after new methods for analyzing pathways of exposure become available to the office.*

~~Existing law, the Porter-Cologne Water Quality Control Act, authorizes the State Water Resources Control Board or a California regional water quality control board to include in a cleanup and abatement order the provision of, or payment for, uninterrupted replacement water service to each affected public water supplier or private well owner.~~

~~This bill would require the state board or a regional board, as applicable, to include in a cleanup and abatement order the provision of, or payment for, uninterrupted replacement water service to each affected public water supplier or private well owner.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     *SECTION 1. Section 116365.3 is added to the Health and*
- 2     *Safety Code, to read:*
- 3     *116365.3. The Office of Environmental Health Hazard*
- 4     *Assessment shall revise the public health goal for perchlorate in*
- 5     *drinking water as soon as possible after new methods for*
- 6     *analyzing pathways of exposure become available to the office.*
- 7     ~~SECTION 1. Section 13304 of the Water Code is amended to~~
- 8     ~~read:~~
- 9     ~~13304. (a) Any person who has discharged or discharges~~
- 10    ~~waste into the waters of this state in violation of any waste~~

1 discharge requirement or other order or prohibition issued by a  
2 regional board or the state board, or who has caused or permitted,  
3 causes or permits, or threatens to cause or permit any waste to be  
4 discharged or deposited where it is, or probably will be,  
5 discharged into the waters of the state and creates, or threatens to  
6 create, a condition of pollution or nuisance, shall upon order of  
7 the regional board, clean up the waste or abate the effects of the  
8 waste, or, in the case of threatened pollution or nuisance, take  
9 other necessary remedial action, including, but not limited to,  
10 overseeing cleanup and abatement efforts. A cleanup and  
11 abatement order issued by the state board or a regional board  
12 shall require the provision of, or payment for, uninterrupted  
13 replacement water service, which may include wellhead  
14 treatment, to each affected public water supplier or private well  
15 owner. Upon failure of any person to comply with the cleanup or  
16 abatement order, the Attorney General, at the request of the  
17 board, shall petition the superior court for that county for the  
18 issuance of an injunction requiring the person to comply with the  
19 order. In the suit, the court shall have jurisdiction to grant a  
20 prohibitory or mandatory injunction, either preliminary or  
21 permanent, as the facts may warrant.

22 (b) (1) The regional board may expend available money to  
23 perform any cleanup, abatement, or remedial work required  
24 under the circumstances set forth in subdivision (a), including,  
25 but not limited to, supervision of cleanup and abatement  
26 activities that, in its judgment, is required by the magnitude of  
27 the endeavor or the urgency for prompt action to prevent  
28 substantial pollution, nuisance, or injury to any waters of the  
29 state. The action may be taken in default of, or in addition to,  
30 remedial work by the waste discharger or other persons, and  
31 regardless of whether injunctive relief is being sought.

32 (2) The regional board may perform the work itself, or with  
33 the cooperation of any other governmental agency, and may use  
34 rented tools or equipment, either with operators furnished or  
35 unoperated. Notwithstanding any other provisions of law, the  
36 regional board may enter into oral contracts for the work, and the  
37 contracts, whether written or oral, may include provisions for  
38 equipment rental and in addition the furnishing of labor and  
39 materials necessary to accomplish the work. The contracts are  
40 not subject to approval by the Department of General Services.

~~(3) The regional board shall be permitted reasonable access to the affected property as necessary to perform any cleanup, abatement, or other remedial work. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, the regional board may enter the property without consent or the issuance of a warrant.~~

~~(4) The regional board may contract with a water agency to perform, under the direction of the regional board, investigations of existing or threatened groundwater pollution or nuisance. The agency's cost of performing the contracted services shall be reimbursed by the regional board from the first available funds obtained from cost recovery actions for the specific site. The authority of a regional board to contract with a water agency is limited to a water agency that draws groundwater from the affected aquifer, a metropolitan water district, or a local public agency responsible for water supply or water quality in a groundwater basin.~~

~~(e) (1) If the waste is cleaned up or the effects of the waste are abated, or, in the case of threatened pollution or nuisance, other necessary remedial action is taken by any governmental agency, the person or persons who discharged the waste, discharges the waste, or threatened to cause or permit the discharge of the waste within the meaning of subdivision (a), are liable to that governmental agency to the extent of the reasonable costs actually incurred in cleaning up the waste, abating the effects of the waste, supervising cleanup or abatement activities, or taking other remedial action. The amount of the costs is recoverable in a civil action by, and paid to, the governmental agency and the state board to the extent of the latter's contribution to the cleanup costs from the State Water Pollution Cleanup and Abatement Account or other available funds.~~

~~(2) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, that identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the~~

1 county recorder of the county in which the property is located.  
 2 Upon recordation, the lien has the same force, effect, and priority  
 3 as a judgment lien, except that it attaches only to the property  
 4 posted and described in the notice of lien, and shall continue for  
 5 10 years from the time of the recording of the notice, unless  
 6 sooner released or otherwise discharged. Not later than 45 days  
 7 after receiving a notice of lien, the owner may petition the court  
 8 for an order releasing the property from the lien or reducing the  
 9 amount of the lien. In this court action, the governmental agency  
 10 that incurred the cleanup costs shall establish that the costs were  
 11 reasonable and necessary. The lien may be foreclosed by an  
 12 action brought by the state board on behalf of the regional board  
 13 for a money judgment. Money recovered by a judgment in favor  
 14 of the state board shall be deposited in the State Water Pollution  
 15 Cleanup and Abatement Account.

16 (d) If, despite reasonable effort by the regional board to  
 17 identify the person responsible for the discharge of waste or the  
 18 condition of pollution or nuisance, the person is not identified at  
 19 the time cleanup, abatement, or remedial work is required to be  
 20 performed, the regional board is not required to issue an order  
 21 under this section.

22 (e) “Threaten,” for purposes of this section, means a condition  
 23 creating a substantial probability of harm, when the probability  
 24 and potential extent of harm make it reasonably necessary to take  
 25 immediate action to prevent, reduce, or mitigate damages to  
 26 persons, property, or natural resources.

27 (f) Replacement water provided pursuant to subdivision (a)  
 28 shall meet all applicable federal, state, and local drinking water  
 29 standards, and shall have comparable quality to that pumped by  
 30 the public water system or private well owner prior to the  
 31 discharge of waste.

32 (g) (1) Any public water supplier or private well owner  
 33 receiving replacement water by reason of an order issued  
 34 pursuant to subdivision (a), or any person or entity who is  
 35 ordered to provide replacement water pursuant to subdivision (a),  
 36 may request nonbinding mediation of all replacement water  
 37 claims.

38 (2) If so requested, the public water suppliers receiving the  
 39 replacement water and the persons or entities ordered to provide  
 40 the replacement water, within 30 days of the submittal of a water

1 replacement plan, shall engage in at least one confidential  
2 settlement discussion before a mutually acceptable mediator.

3 (3) Any agreement between parties regarding replacement  
4 water claims resulting from participation in the nonbinding  
5 mediation process shall be consistent with the requirements of  
6 any cleanup and abatement order.

7 (4) A regional board or the state board is not required to  
8 participate in any nonbinding mediation requested pursuant to  
9 paragraph (1).

10 (5) The party or parties requesting the mediation shall pay for  
11 the costs of the mediation.

12 (h) As part of any cleanup and abatement order that requires  
13 the provision of replacement water, a regional board or the state  
14 board shall request a water replacement plan from the discharger  
15 in cases where replacement water is to be provided for more than  
16 30 days. The water replacement plan is subject to the approval of  
17 the regional board or the state board prior to its implementation.

18 (i) A “water replacement plan” means a plan pursuant to  
19 which the discharger will provide replacement water in  
20 accordance with a cleanup and abatement order.

21 (j) This section does not impose any new liability for acts  
22 occurring before January 1, 1981, if the acts were not in violation  
23 of existing laws or regulations at the time they occurred.

24 (k) Nothing in this section limits the authority of any state  
25 agency under any other law or regulation to enforce or administer  
26 any cleanup or abatement activity.

27 (l) The Legislature declares that the amendments made to  
28 subdivision (a) of this section by Senate Bill 1004 of the 2003-04  
29 Regular Session do not constitute a change in, but are declaratory  
30 of, existing law.